IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 21339 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BHARAT SEVASHRAM SANGH THR'ITS SECRETARY & 1 - Petitioner(s)

Versus

SPL.SECRETARY (APPEALS) & 3 - Respondent(s)

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Appearance :
MR KK TRIVEDI for Petitioner(s) : 1 - 2.
None for Respondent(s) : 1 - 2, 4,
MR DA DESAI, AGP for Respondent(s) : 3,
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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 21/10/2005

ORAL JUDGMENT

1.In this petition under Articles 226 and 227 of the

Constitution of India the petitioners have challenged the legality and validity of the judgment and order passed by the Special Secretary (Appeals), Revenue Department, State of Gujarat dated 17-6-2003 (21-7-2003) passed in Revision application No.22/98 in dismissing the said Revision Application and confirming the order passed by the Collector, Bharuch dated 17-11-1993. The dispute is with regard to the land bearing survey No.52/1 paiki admeasuring 2 hactare and 44 gunthas of land situated at village Khokharaumar, Tal: Dediyapada, Dist: Bharuch. The land in question was originally owned by one Maganbhai Nanabhai Patel (Patidar) and the same was a new tenure restricted land and the said land came to be purchased by the petitioner by registered sale deed on 14-6-84. Necessary entry was made in the Revenue Record vide entry No.336 dated 14-8-84. The Collector, Bharuch has taken the said entry No.336 under suo motu revision and by order dated 17-11-1993 set aside the said entry No.336 dated 14-6-84 on the ground that the same is in breach of Section 2(6) as well as Section 63 of the Bombay Tenancy and Agricultural Land Act (for short “the Act”) and instructed the Mamlatdar, Dediyapada to initiated the proceedings under Section 84(c) of the

Act. Being aggrieved by and dissatisfied with the order passed by the Collector, Bharuch dated 17-11-1993, the petitioner preferred Revision Application being Revision Application No.22/98 before the Revenue Department (Appeals) and the Joint Secretary (Appeals), Revenue Department, State of Gujarat by order dated 17-6-2003 (21-7-2003) dismissed the said Revision Application confirming the order passed by the Collector, Bharuch dated 17-11-1993. Being aggrieved by and dissatisfied with the order passed by the Joint Secretary (Appeals), Revenue Department, State of Gujarat dated 17-6-2003 (21-7-2003), the petitioner has preferred the present Special Civil Application under Articles 226 and 227 of the Constitution of India.

2. Shri KK Trivedi, learned advocate appearing on behalf of the petitioner has initially tried to submit that the Collector, Bharuch has initiated the proceedings after unreasonable period but having drawn his attention that even the petitioner challenged the order passed by the Collector, Bharuch dated 17-11-1993 before the State Government i.e. Joint Secretary (Appeals) after the period of five years and even the present Special Civil Application is also filed by the petitioner challenging the order passed by the Joint

Secretary (Apepals) after the period of two years without their being any explanation for such delay. Shri Trivedi has submitted that he does not press the point with regard to the limitation and proceedings initiated by the Collector after unreasonable period. However, he has submitted that the Collector, Bharuch ought not to have set aside the entry No.336 on the ground that the transaction between the petitioner and the original land owner is in breach of Sections 2(6) and 63 of the Act. He has relied upon the judgment of this court in the case of Evergreen Apartment Cooperative Housing Society V Special Secretary (Revenue) reported in 1991(1) GLR page 113 and in the case of Siddharthbhai B Shah and Others V. State of Gujarat and Others reported in 1999(3) GLR page 2527. He has also relied upon another judgment of this court in the case of Ganeshbhai Manilal Mayavanshi V State of Gujarat and Others reported in 2005(9) GHJ page 634, in support of his submission that when the petitioner has purchased the land in question by registered sale deed, the Revenue Authority is bound to give effect to the said sale deed in the revenue record. However, if the authority is of the opinion that by virtue of the said sale / transaction, there is a breach of any other law,

an additional entry can be made by the Revenue Authority to the effect that according to it, there is a breach of Sections 2(6) and 63 of the Act and the matter can be referred to the appropriate authority for initiating the proceedings.

3. Shri DA Desai, learned AGP while supporting the order passed by the Collector, Bharuch as well as the Joint Secretary (Appeals) Revenue Department has submitted that in fact the Collector is also having suo motu power and is over all supervisor of the subordinate Revenue Authority and can direct and/or instruct the appropriate authority to initiate the proceedings when it has come to his knowledge that the said transaction is in breach of a particular Act, in the present case the Bombay Tenancy and Agricultural Land Act. Therefore, it is submitted that when it is found that the transaction between the petitioner and the original land owner is in breach of Sections 2(6) and 63 of the Act, the entry in question is rightly set aside and the Collector has rightly instructed the Mamlatdar, Dediyapada to initiate the proceedings under Section 84(c) of the Act, therefore, it is requested to dismiss the present Special Civil Application.

4. It is required to be noted that the petitioner has

purchased the land in question by registered sale deed. The Collector, Bharuch has set aside the entry no.336 on the ground that the transaction is in breach of Sections 2(6) and 63 of the Act. As held by this court in the case of Evergreen Apartment Cooperative Housing Society (supra) and Siddharthbhai B Shah and Others(supra), the Revenue Authority while exercising RTS jurisdiction, has no jurisdiction to consider the legality and validity of the transaction on the ground that the same is in breach of any other law and in the present case the Bombay Tenancy and Agricultural Land Act. However, as held by this court in the case of Ganeshbhai Manilal Mayavanshi V State of Gujarat and Others reported in 2005(9) GHJ page 634, the Revenue Authority is required to give effect to the sale deed in the revenue record and if the Revenue Authority is of the opinion that the said transaction is in breach of Sections 2(6) and 63 of the Act, then additional entry can be made in the revenue record to that effect and the same will not preclude the appropriate authority from initiating the proceedings for breach of the Act by virtue of the aforesaid transaction.

5. For the reasons as stated above, the petition succeeds partly. The judgment and order passed by the Joint

Secretary (Appeals), Revenue Department, State of Gujarat dated 17-6-2003 (21-7-2003) passed in Revision application No.22/98 as well the order passed by the Collector, Bharuch dated 17-11-93 are hereby quashed and set aside only in so far as with respect to the entry 336 is concerned and rest of the order passed by the Collector, Bharuch instructing the Mamlatdar, Dediyapada to initiate the proceedings under Section 84(c) of the Act is hereby confirmed. The entry No.336 with respect to the land in question is hereby restored and the Revenue Authority is directed to make additional entry in the revenue record that according to it the said transaction is in breach of Sections 2(6) and 63 of the Act. As stated above, the appropriate authority is not precluded from initiating the proceedings for breach of Sections 2(6) and 63 of the Act for the aforesaid sale / transaction between the petitioner and the original land owner with regard to the land in question and as such as stated above, the order passed by the Collector, Bharuch deated 17-11-1993 instructing the Mamlatdar, Dediyapada to initiate the proceedings under Section 84(c) of the Act is already confirmed by this court and the Mamlatdar, Dediyapada is directed to act accordingly as early as

possible.

6.Rule is made absolute to the aforesaid extent. However, there will be no order as to costs.

(M.R.SHAH,J)

Shekhar/-